IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR
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O R D E R

Sanskaritk Kendra Karamchari Kalyan Samiti
vs
West Zone Center & Ors.

S.B. CIVIL WRIT PETITION NO.3981/2002 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : **5th Sept., 2006**

PRESENT

REPORTABLE

HON'BLE MR.MOHAMMAD RAFIQ,J.

Mr.D.C. Sharma, Advocate for the petitioner.
Mr.T. Gupta, Advocate for the respondents.

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BY THE COURT: -

This writ petition has been filed by Sanskaritk Kendra Karamchari Kalyan Samiti against West Zone Cultural Center, Udaipur alongwith three other respondents with the prayer that the respondents may be directed to frame rules of promotion in the Rules of 1995 and the provisions of Rule 16 to the extent of Special Selection Committee be declared ultra vires to the provisions of Article 14 and 16 of the Constitution of India and the

orders Annex.A/7, A/8 and A/9 all dated 5th July, 2001 thereby promoting respondents no.2 to 4 on the recommendation of Special Selection Committee constituted under Rule 16 of the Service Bye Laws of the Center on the post of Asstt. Programme Officer, Programme Officer and U.D.C. be quashed and set aside.

This petition has been filed in the name of Sanskaritk Kendra Karamchari Kalyan Samiti, which is said to be a society registered under the Rajasthan Societies Registration Act,1958. There are serious doubts about the maintainability of the writ petition against West Zone Cultural Center on the question whether or not it falls within the preview of State as envisaged by Article 12 of the Constitution of India. I need not however dwell on that question any further because in my view this writ petition deserves to be dismissed on another ground which I shall presently state.

Prior to filing of the present writ petition, one Rakesh Mehta earlier filed a writ petition before this Court being S.B. Civil Writ Petition No.3555/2001, which was dismissed as withdrawn by this Court on 21.8.2002. It was thereafter that Rakesh Mehta filed another writ petition being S.B. Civil Writ Petition No.954/2002

and yet another writ petition was filed by one Miss Abha Mathur being S.B. Civil Writ Petition No.948/2002. In these writ petitions, both of them challenged promotion granted to the private respondents herein on the same grounds similar to the one raised in the present writ petition barring challenge to the validity of rules. These two writ petitions were dismissed by this Court as being not maintainable because earlier writ petition was dismissed as withdrawn without liberty to file fresh one and filing of the fresh writ petition without any change in the cause of action was barred by principles of res judicata. When the effected persons have already been agitating the grievance, the petitioner Sanskaritk Kendra Karamchari Kalyan Samiti cannot be permitted to espouse the cause of such persons particularly when the respondents no.2 to 4 also being employees of West Zone Cultural Center are members of the petitioner Samiti. Surprisingly enough, the earlier two writ petitions were filed by Rakesh Mehta, who is one of the effected employee and in the present writ petition also, he has deposed the affidavit as authorized signatory on behalf of the petitioner Samiti. Clearly the writ petition lacks bonafides and is an attempt to over come the difficulty posed by dismissal of the earlier writ petition.

The Division Bench of this Court in D.B. Civil Special Appeal No.297/1993 (General Insurance Employees Association Vs. General Insurance Corporation of India & Ors, decided on 19th July, 2006) in somewhat similar case held as under: -

> "Apart from merits of the case, we have heard arguments of both the learned counsels on the question of maintainability of petition filed by the Association precisely on the question whether an employees' association can in writ proceedings challenge promotion granted to certain employees even if they are not its members and have come on transfer from another region. Number of judgments delivered by the Hon'ble Supreme Court and of this Court have been cited from both sides regarding maintainability of the writ petition by an employees' association. We need not dwell upon this issue in detail because we propose to decide this appeal on merits. While we have no doubt about the locus standi of an employees' association to file writ petition on behalf of its members-employees for redressal of their grievances in appropriate cases, we have serious doubt about the maintainability of writ petition at the instance of an employees' association questioning promotion granted to certain employees simply because they are not its members. Grant of promotion to some and refusal thereof to other is an issue which concerns the employees concerned and if the affected employee chooses not to challenge non-grant of promotion to him, it would mean that he has no grievance and in such a situation why an employees' association should be permitted to challenge the same by initiating legal proceedings on his behalf."

Now that was a case where the affected employees did not

choose to challenge the promotion granted to their fellow employees. In the present case however, affected employee was none other than the authorized signatory of the union in the present case, who himself field not one but two successive writ petitions on the same cause of action and lost in both of them.

For what has been discussed above, the present writ petition is liable to be dismissed and is accordingly dismissed. There shall be no order as to costs.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-